EXPLANATORY MEMORANDUM TO

THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016 AND THE LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) ACT 2017 (CONSEQUENTIAL AMENDMENTS) ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Wales (the Wales Office) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to update existing UK legislation in consequence of the Tax Collection and Management (Wales) Act 2016 ("the TCM Act"), which establishes the Welsh Revenue Authority ("WRA") as the tax authority responsible for the collection and management of devolved taxes, and the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the LTT Act"), which creates land transaction tax in Wales.

2.2 This Order is necessary to add WRA to the list of bodies from which MPs are disqualified as non-executive members under the House of Commons Disqualification Act 1975; to make consequential changes so WRA is brought within the definition of "Welsh public authority" in section 83 of the Freedom of Information Act 2000; to ensure that whistleblowers who assist WRA in relation to the devolved taxes are protected by adding WRA to the Public Interest Disclosure (Prescribed Persons) Order 2014; and to add a reference to land transaction tax to regulation 45 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 This instrument will be made in exercise of the powers conferred by section 150(1) and (2) of the Government of Wales Act 2006 ("GOWA"), which enables the making of provision consequential on legislation made by the National Assembly for Wales. All amendments made under this Order are in consequence of the TCM Act and the LTT Act, which received Royal Assent on 25 April 2016 and 24 May 2017 respectively.

3.2 Although there are specific powers to amend the Schedules to the House of Commons Disqualification Act 1975 and the Freedom of Information Act 2000 within those Acts, it is considered that using an order made under section 150 of GOWA is appropriate in these circumstances for reasons of efficiency and the saving of parliamentary time. The affirmative procedure applies to the making of an order under section 150, and this is no less stringent than the procedures that would have

applied if the amendments had been made using the specific powers in the relevant legislation.

3.3 It is intended that the Order will come into force on the day after the day on which it is made. This is because the amendments to Freedom of Information Act 2000 and the Public Interest Disclosure (Prescribed Persons) Order 2014 extend rights to the public, and it is therefore considered appropriate for these amendments to come into force as soon as possible. The WRA has been involved in the development of this Order for several months, and has already familiarised itself with the new obligations which will be imposed by Articles 3 and 4. Consequently, it will not need to make any additional changes to its practices and procedures in order to comply with the amendments.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is UK wide.

4.2 The territorial application of this instrument is UK wide.

5. European Convention on Human Rights

5.1 The Secretary of State for Wales has made the following statement regarding Human Rights:

"In my view the provisions of the Tax Collection and Management (Wales) Act 2016 and the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Consequential Amendments) Order 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is subject to the affirmative procedure in UK Parliament.

7. Policy background

What is being done and why?

7.1 The Wales Act 2014 provides for the full devolution of the taxation of land transactions and disposals to landfill in Wales to the National Assembly for Wales. The new devolved taxes came into force from 1 April 2018.

7.2 The TCM Act makes provision for the collection and management of the devolved taxes. It establishes the WRA as the tax authority responsible for the collection of the devolved taxes. The Act puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between WRA and taxpayers in Wales, including the relevant powers, rights and duties.

7.3 The purpose of this Order is to make consequential amendments to existing enactments as a result of the establishment of WRA as a separate legal body from the Welsh Government. The amendments ensure that whistleblowers who assist WRA in relation to the devolved taxes are potentially protected by the provisions of the

Employment Rights Act 1996 in the same way as individuals who assist HMRC; to make consequential changes so WRA is brought within the definition of "Welsh public authority" in section 83 of the Freedom of Information Act 2000; and to add WRA to the list of bodies from which MPs are disqualified as non-executive members (executive members of WRA are already disqualified by section 1(1)(b) of the House of Commons Disqualification Act 1975).

7.4 The Order also adds a reference to land transaction tax to regulation 45 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Under those Regulations, the Commissioners for Revenue and Customs are required to maintain a register of the beneficial owners of certain trusts. This amendment ensures that a trust, the trustees of which are liable to pay land transaction tax, is included as a taxable relevant trust. Consequently, trustees will be required to report information to HMRC for the first time about the beneficial owners of those trusts liable to pay land transaction tax by 31 January 2020.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 No formal consultation has taken place on the Order; Orders taken forward under section 150 of the Government of Wales Act 2006 are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. The terms of the Order have been agreed between the Welsh Government, HM Treasury, Cabinet Office and the Office of the Secretary of State for Wales.

11. Guidance

11.1 No formal guidance will be available on the use of these powers.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

15. Contact

15.1 Jeff Lloyd at the Office of the Secretary of State for Wales Telephone: 02920 92 4210 or email: Jeff.Lloyd@walesoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Geth Williams at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alun Cairns MP, Secretary of State for Wales at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.